

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4923 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

DINESHKUMAR GANESHDAS MANDAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4923 of 1997
MR SK JHAVERI for Petitioner No. 1
MR MA PATEL, AGP for Respondent No. 1,2
RULE SERVED for Respondent No. 1/1-1/2
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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 07/04/2004

ORAL JUDGEMENT

1. In this petition the petitioner has challenged the decision of the respondents to refuse the petitioner benefit under the Finance Department, Government Resolution dated 5th July, 1991 as modified by the subsequent Government Resolution dated 16th August, 1994 and has prayed for grant of higher grade pay-scale. In other words, the petitioner's grievance is that he has been wrongly denied the benefit which is popularly known as 9-18-27 scheme with effect from 1st July, 1991 and all his retiral benefits based on that basis. He has, therefore, prayed for revision of pay-scale and also grant of retiral benefits on the revised pay-scale basis.

2. The petitioner was appointed by the Registrar, Labour Court, Ahmedabad vide order dated 3rd July, 1964 to officiate as Stenographer in the Labour Courts at Ahmedabad in the grade of Rs.180-340 with effect from 3rd July, 1964. The said appointment was purely temporary and his service could be terminated at any time without notice. Subsequently the petitioner appeared in the higher Hindi examination held by the Director of Language and cleared it in the month of October/November 1965. Vide order dated 31st July, 1984 passed by the President, Industrial Court the petitioner was granted the benefit of selection grade with effect from 1st July, 1982. The petitioner thereafter made an application to the Registrar, Labour Court to grant him higher grade but the said application was turned down by the Registrar vide order dated 9th July, 1996. In the meanwhile the District Collector, Ahmedabad vide communication dated 6th May, 1996 addressed to the Registrar, Industrial Court called for the information with regard to the Stenographers whose appointments were made on irregular basis and who were granted the benefit of higher pay scale and also to take appropriate steps to cancel the grant of higher pay-scale and to report to him. The said communication was addressed to the Registrar, Industrial Court and it related to the petitioner alongwith five others. Vide letter dated 18th May, 1996 the Registrar, Labour Court informed the Registrar, Industrial Court that after examining all the aspects relating to the initial appointment of three Stenographers, namely S/s. M.D. Shah, L.S. Pandit and D.G. Mandan i.e. the petitioner, it appeared that their appointments were made in accordance with the rules and that were made permanent also in accordance with the prevailing rules. He, therefore, opined that the services of these Stenographers were required to be considered as regular one even when they were not appointed through G.P.S.C. and/or under the Central Recruitment Scheme. In the said letter the Registrar, Labour Court had elaborately

set-out the reasons for his opinion with regard to aforesaid three Stenographers.

2.1. It is the grievance of the petitioner that when his initial appointment was considered to be regular one and that appointment continued till he retired from the service, there being no promotional avenues in the said cadre, he ought to have been granted the benefit of higher grade in accordance with the policy of the Government contained in resolution dated 5th July, 1991 as modified under Resolution dated 16th August, 1994.

2.2. This petition is resisted by the respondents by filing affidavit-in-reply. The sum and substance of the reply of the respondents appears to be that according to the Government the appointment of the petitioner was not in accordance with the recruitment rules that were framed in that behalf and if that be so, the benefit of higher grade could not be made available to the petitioner and other Stenographers, who stood on the same footing. It also appears that the say of the Government is that the aforesaid resolutions did not apply to Industrial Court and the Labour Court as it could not be termed as a District or Regional Office of the Department of the Government. For these reasons, according to the Government, the petitioner was not entitled to receive the benefit of higher grade.

3. Mr. S.K. Jhaveri, learned advocate appearing for the petitioner has submitted that the reason advanced by the respondents for denying this benefit was dehors the fact in as much as the appointment of the petitioner was made in accordance with the procedure then prevailing. The petitioner had got himself registered with Employment Exchange for being appointed as Stenographer, Grade-II and he was called for the interview and selected in accordance with the recruitment rules. Therefore, there was nothing wrong with the initial appointment of the petitioner in the service. He has further submitted that considering the fact that the petitioner had become entitled, in view of the criteria laid down in the revised scheme to receive higher grade as he had completed 9-18-27 years' service, he ought to have been granted the said benefit. However, the higher grade at different stages was not made available to him. In his submission the said benefit was wrongly denied to him.

3.1. As against that, the submission of Mr. M.A. Patel, Ld. AGP is that when it was found that the appointment of the petitioner was not in accordance with

the concerned provisions, there was no question of granting him the benefit of higher grade. He has further submitted that the petitioner being Stenographer, Grade-II working in the Industrial Court and Labour Court, he was not covered under the earlier scheme as well as the revised scheme of August 1994. He, therefore, submitted that the petitioner was rightly denied the benefit of the higher grade. Lastly he has submitted that the present petition deserved to be dismissed.

4. Having gone through the record of this petition as well as having carefully considered the rival submissions, it clearly appears that the petitioner was appointed to officiate as Stenographer in Labour Court, Ahmedabad, in the scale of Rs.180-340 with effect from 3rd July, 1964. The said appointment was made by the registrar, Labour Court, Ahmedabad. It was purely on temporary basis. At the time when the appointment came to be made, the recruitment to the post of Stenographer (English) in the Labour Courts was being made in accordance with the recruitment rules introduced vide notification dated 18th June, 1964 issued by the Education and Labour Department, Government of Gujarat. The rules were framed under proviso to Article 309 of the Constitution of India. Rules prescribed two modes of appointments, namely one by promotion from the post of Clerk and Typist serving in the Labour Courts and secondly by nomination. The petitioner's appointment appears to be made by nomination. It is the say of the petitioner that he had registered himself with the Employment Exchange and at the time when the appointment was made his name was drawn from the Employment Exchange. He has further averred that the appointment was made in accordance with the recruitment rules of 18th June, 1964. It further appears from the record that by office order no. 43 of 1968 dated 17th May, 1968 the Registrar, Labour Courts confirmed the petitioner who was there officiating as Stenographer on that post. Alongwith the petitioner three others were also confirmed.

4.1. In the meanwhile, General Administration Department of the Government of Gujarat introduced a scheme known as Centralized Recruitment Scheme vide Government Resolution dated 24th July, 1964. Under the said scheme the Stenographers working in the Districts and Regional Offices and which were not within the purview of the G.P.S.C. were covered under the scheme and the recruitment to the post of Stenographer, Grade-II, Stenotypist were then required to be made in accordance with the provisions of the scheme. It is the

say of the respondents that the petitioner's appointment was not made in accordance with the provisions of the scheme. It appears that under the scheme it is the District Collector which is the appointing authority. In the instant case, as stated above, the petitioner was appointed by the Registrar, Labour Court, Ahmedabad. The respondents, therefore, have come out with a case that the appointment of the petitioner was irregular one and, therefore, he was not entitled to receive the benefit of higher grade.

4.2. It is important to note at this juncture that though the initial appointment of the petitioner on 3rd July, 1964 was made on temporary basis, at the relevant time there was no other provisions in existence which governed the recruitment of Stenographers except the recruitment rules of 18th June, 1964. The petitioner's recruitment was made in accordance with the said rules. The scheme was introduced later on. It may also be noted that the petitioner was continued on this post till the date he reached the age of superannuation. However, enroute to his journey to the retirement he was confirmed in the said post on 17th May, 1968. If the respondents had any objection to so called irregular recruitment of the petitioner on the post of Stenographer, Grade-II, there was no need to confirm him in the said post. He could have been asked to reapply through proper channel and to comply with all the requirements prescribed under the scheme, but that was not done.

4.3. It may also be noted here that the issue regarding the Centralized Recruitment Scheme was considered by the learned Single Judge of this Court [Coram : M.S. Shah, J.] in the case of G.M. NAIDU v. STATE OF GUJARAT in Special Civil Application No. 6914 of 1992 dated 7th July, 1999. In para. 7 of the said judgment the learned Judge has not accepted the contention raised by the learned advocate for the Government to the effect that all the offices which did not fall within the purview of G.P.S.C. were covered under the service recruitment scheme. The learned Judge has quoted the para. of the scheme, which is as under :-

"In supersession of Government orders, if any,
Government is pleased to sanction the
accompanying scheme for recruitment of
Stenographers (IInd grade) and Steno-typists in
districts and Regional Offices of all Departments
which are not within the purview of Gujarat
Public Service Commission."

After quoting the aforesaid passage the learned Judge has observed that an office would not fall within the Centralized Recruitment Scheme merely because it does not fall within the purview of P.S.C. The office will have to satisfy the further test of being a District Office or a Regional Office. Thus, with the introduction of the scheme, the office of the Labour Court, Ahmedabad was not automatically brought under the scheme since it was not within the purview of P.S.C. Ofcourse in the case before the learned Single Judge the controversy was that of the office of the Food Controller where the petitioner of that petition was working, was neither district nor a regional office and it was office at the State level which was outside the purview of even the scheme. Be that as it may, the fact remains that there is no material to show that with the introduction of the said scheme the recruitment rules of June 1964 ceased to have effect. Further that when the appointment was made in accordance with the said rules when the scheme was not in existence, whether such recruitment could be termed as irregular.

4.4. It further appears from the record of the petition that in the year 1970 the Government of Gujarat framed recruitment rules vide resolution dated 11th August, 1970. The say of the respondents is that these rules were framed under the proviso to Article 309 of the Constitution of India and they prescribed the mode of recruitment to the post of Stenographer, Grade-II. The say of the petitioner is that even the 1970 rules have not superseded the rules of 1964, which contention has been strongly denied by the respondents. However, the fact remains that the recruitment of the petitioner was made much before the introduction of the 1970 rules. It, therefore, retrospectively cannot be said that the recruitment was not made in accordance with the relevant provisions, particularly when the initial appointment of the petitioner was made in accordance with the recruitment rules which were existing then. In the aforesaid decision the learned Single Judge has also taken a view that the recruitment of an employee cannot be termed as irregular giving retrospective effect to the recruitment rules which have been framed subsequently. When that is the position I have no hesitation to hold that the recruitment of the petitioner as Stenographer, Grade-II was absolutely in consonance with the provisions existing then.

4.5. It is interesting to note that the petitioner was recruited in the employment of the Labour Court/Industrial Court way back on 3rd July, 1964. As

stated above, on 17th May, 1968 he was confirmed in that post. Vide office order dated 31st July, 1984 of the President of the Industrial Court the petitioner was granted selection grade in the pay-scale of Rs.650-900 with effect from 1st July, 1982. Further he was granted all the benefits during the entire length of service which were made available to other similarly situated Stenographers. It was only at the time when the petitioner made a request to grant him benefit which is popularly known as 9-18-27 scheme, the respondents thought it fit to explore origin of the petitioner in the employment and ultimately found out that it was not in consonance with the provisions of recruitment rules and 32 years after his initial appointment, the respondents declared that it was an irregular recruitment. It is really a matter of surprise that at such a belated stage and having taken all the work from the petitioner all throughout his career of 32 years the respondents have now audacity to say that the appointment was irregular one and, therefore, he cannot be given the benefit of 9-18-27 scheme. The attitude of the respondents is required to be deprecated.

4.6. It may also be seen that in the case of G.M. NAIDU (supra) this Court was required to consider a case of the Stenographer who was appointed initially with Cooperative Tribunal and he was recruited by the President of the said Tribunal. In relation to the said Stenographer, this Court has held that he was squarely covered under the scheme of 1991 and modified scheme of 16th August, 1994 (9-18-27 scheme). On the facts of the present case, there does not appear to be any dispute even from the respondents that the petitioner but for his initial appointment would have been entitled to have the benefit of the scheme. The benefit was denied to the petitioner solely on the ground that his recruitment was irregular as can be seen from the communication which is dated 9th July, 1996, which is in response to the application that was made by the petitioner on 8th/9th July, 1991 i.e. at the time when the petitioner was approaching the fag end of his service and he had made that application keeping in view the retiral benefits that may be granted to him after reaching the age of superannuation. Even for replying to that application the respondents took almost five years and informed the petitioner that his application for grant of higher grade was simply filed. The respondents had even not cared to inform him for what reason his request was not being acceded to. It was only when the petitioner made some efforts to find out, he came to know that the benefit of higher grade was denied to him on the ground of irregular

appointment. It is rather unfortunate that a person who has rendered sincere and loyal service to the Government for almost 32 years is being treated in such a shabby manner. The conduct of the Government is absolutely reprehensible to say the least.

5. In view of the aforesaid, the decision of the respondents not to grant higher grade to the petitioner under the scheme dated 5th July, 1991 as modified by scheme dated 16th August, 1994 popularly known as 9-18-27 scheme is required to be quashed and set aside. The respondents are directed to extend the benefit of the aforesaid scheme to the petitioner with effect from 1st July, 1990 and on the said basis they may work out the retiral benefits of the petitioner and pay to him the revised retiral benefits together with arrears on or before 30th June, 2004. In other words, the respondents are directed to work out the revised scale of the petitioner in accordance with the provisions of the aforesaid scheme and pay to him the retiral benefits on the said basis.

In view of the aforesaid, this petition is allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.